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Affiliate Transaction Rules Applicable to Large California Energy Utilities

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I. Definitions

Unless the context otherwise requires, the following definitions govern the construction of these Rules:

- A. “Affiliate” means any person, corporation, utility, partnership, or other entity 5 per cent or more of whose outstanding securities are owned, controlled, or held with power to vote, directly or indirectly either by a utility or any of its subsidiaries, or by that utility’s controlling corporation and/or any of its subsidiaries as well as any company in which the utility, its controlling corporation, or any of the utility’s affiliates exert substantial control over the operation of the company and/or indirectly have substantial financial interests in the company exercised through means other than ownership. For purposes of these Rules, “substantial control” includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A direct or indirect voting interest of 5% or more by the utility in an entity’s company creates a rebuttable presumption of control.

For purposes of this Rule, “affiliate” shall include the utility’s parent or holding company, or any company which directly or indirectly owns, controls, or holds the power to vote 10% or more of the outstanding voting securities of a utility (holding company), to the extent the holding company is engaged in the provision of products or services as set out in Rule II B. However, in its compliance plan filed pursuant to Rule VI, the utility shall demonstrate both the specific mechanism and procedures that the utility and holding company have in place to assure that the utility is not utilizing the holding company or any of its affiliates not covered by these Rules as a conduit to circumvent any of these Rules. Examples include but are not limited to specific mechanisms and procedures to assure the Commission that the utility will not use the holding company or another utility affiliate not covered by these Rules as a vehicle to (1) disseminate information transferred to them by the utility to an affiliate covered by these Rules in contravention of these Rules, (2) provide services to its affiliates covered by these Rules in contravention of these Rules or (3) to transfer employees to its affiliates covered by these Rules in contravention of

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these Rules. In the compliance plan, a corporate officer from the utility and holding company shall verify the adequacy of these specific mechanisms and procedures to ensure that the utility is not utilizing the holding company or any of its affiliates not covered by these Rules as a conduit to circumvent any of these Rules. Regulated subsidiaries of a utility, defined as subsidiaries of a utility, the revenues and expenses of which are subject to regulation by the Commission and are included by the Commission in establishing rates for the utility, are not included within the definition of affiliate. However, these Rules apply to all interactions any regulated subsidiary has with other affiliated entities covered by these rules.

- B. "Commission" means the California Public Utilities Commission or its succeeding state regulatory body.
- C. "Customer" means any person or corporation, as defined in Sections 204, 205 and 206 of the California Public Utilities Code, that is the ultimate consumer of goods and services.
- D. "Customer Information" means non-public information and data specific to a utility customer which the utility acquired or developed in the course of its provision of utility services.
- E. "FERC" means the Federal Energy Regulatory Commission.
- F. "Fully Loaded Cost" means the direct cost of good or service plus all applicable indirect charges and overheads.
- G. "Utility" means any public utility subject to the jurisdiction of the Commission as an Electrical Corporation or Gas Corporation, as defined in California Public Utilities Code Sections 218 and 222, and with gross annual operating revenues in California of \$1 billion or more.
- H. "Resource Procurement" means the investment in and the production or acquisition of the energy facilities, supplies, and related products or services necessary for California public utility gas corporations and California public utility electrical corporations to meet their statutory obligation to serve their customers.

II. Applicability

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- A. These Rules shall apply to California public utility gas corporations and California public utility electrical corporations, subject to regulation by the California Public Utilities Commission and with gross annual operating revenues in California of \$1 billion or more.
- B. For purposes of a combined gas and electric utility, these Rules apply to all utility transactions with affiliates engaging in the provision of a product that uses gas or electricity or the provision of services that relate to the use of gas or electricity, unless specifically exempted below. For purposes of an electric utility, these Rules apply to all utility transactions with affiliates engaging in the provision of a product that uses electricity or the provision of services that relate to the use of electricity. For purposes of a gas utility, these Rules apply to all utility transactions with affiliates engaging in the provision of a product that uses gas or the provision of services that relate to the use of gas. However, regardless of the foregoing, where explicitly provided, these Rules also apply to a public utility's parent holding company and to all of its affiliates, whether or not they engage in the provision of a product that uses gas or electricity or the provision of services that relate to the use of gas or electricity.
- C. No holding company nor any utility affiliate, whether or not engaged in the provision of a product that uses gas or electricity or the provision of services that relate to the use of gas or electricity, shall:
- (1) direct or cause a utility to violate or circumvent these Rules, including but not limited to, the prohibitions against the utility providing preferential treatment, unfair competitive advantages or non-public information to its affiliates; ← - - - Formatted: Bullets and Numbering
 - (2) aid or abet a utility's violation of these Rules; or ← - - - Formatted: Bullets and Numbering
 - (3) be used as a conduit to provide non-public information to a utility's affiliate. ← - - - Formatted: Bullets and Numbering
- D. These Rules apply to transactions between a Commission-regulated utility and another affiliated utility, unless specifically modified by the Commission in addressing a separate application to merge or otherwise conduct joint ventures related to regulated services. ← - - - Formatted: Bullets and Numbering
- E. These Rules do not apply to the exchange of operating information, including the disclosure of customer information to its FERC-regulated ← - - - Formatted: Bullets and Numbering
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affiliate to the extent such information is required by the affiliate to schedule and confirm nominations for the interstate transportation of natural gas, between a utility and its FERC-regulated affiliate, to the extent that the affiliate operates an interstate natural gas pipeline.

These Rules do not apply to affiliate transactions involving broadband over power lines (BPL).

F. Existing Rules: Existing Commission rules for each utility and its parent holding company shall continue to apply except to the extent they conflict with these Rules. In such cases, these Rules shall supersede prior rules and guidelines, provided that nothing herein shall supersede the Commission's regulatory framework for BPL adopted in D. 06-04-070 (April 27, 2006) nor shall preclude (1) the Commission from adopting other utility-specific guidelines; or (2) a utility or its parent holding company from adopting other utility-specific guidelines, with advance Commission approval.

G. Civil Relief: These Rules shall not preclude or stay any form of civil relief, or rights or defenses thereto, that may be available under state or federal law.

H. These Rules should be interpreted broadly, to effectuate our stated objectives of fostering competition and protecting consumer interests. If any provision of these Rules, or the application thereof to any person, company, or circumstance, is held invalid, the remainder of the Rules, or the application of such provision to other persons, companies, or circumstances, shall not be affected thereby.

III. Nondiscrimination

A. No Preferential Treatment Regarding Services Provided by the Utility: Unless otherwise authorized by the Commission or the FERC, or permitted by these Rules, a utility shall not:

1. represent that, as a result of the affiliation with the utility, its affiliates or customers of its affiliates will receive any different treatment by the utility than the treatment the utility provides to other, unaffiliated companies or their customers; or
2. provide its affiliates, or customers of its affiliates, any preference (including but not limited to terms and conditions, pricing, or timing) over non-affiliated suppliers or their customers in the provision of services provided by the utility.

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Deleted: G. Exemption (Advice Letter): A Commission-jurisdictional utility may be exempted from these Rules if it files an advice letter with the Commission requesting exemption. The utility shall file the advice letter within 30 days after the effective date of this decision adopting these Rules and shall serve it on all parties to this proceeding. In the advice letter filing, the utility shall:

1. Attest that no affiliate of the utility provides services as defined by Rule II B above; and
2. Attest that if an affiliate is subsequently created which provides services as defined by Rule II B above, then the utility shall:

<#>Notify the Commission, at least 30 days before the affiliate begins to provide services as defined by Rule II B above, that such an affiliate has been created; notification shall be accomplished by means of a letter to the Executive Director, served on all parties to this proceeding; and

<#>Agree in this notice to comply with the Rules in their entirety.

H. Limited Exemption (Application): A California utility which is also a multistate utility and subject to the jurisdiction of other state regulatory commissions, may file an application, served on all parties to this proceeding, requesting a limited exemption from these Rules or a part thereof, for transactions between the utility solely in its capacity serving its jurisdictional areas wholly outside of California, and its affiliates. The applicant has the burden of proof.

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B. Affiliate Transactions: Except for transactions provided for in Sections V D and V E (joint purchases and corporate support), transactions between a utility and its affiliates shall be limited to tariffed products and services, to the utility's sale of goods, property, products or services made generally available by the utility to all market participants through an open, competitive bidding process, to the provision of information made generally available by the utility to all market participants, to Commission-approved resource procurement by the utility, or to transactions provided for in Section VII (new products and services) below.

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1. Resource Procurement. No utility shall engage in resource procurement, as defined in these Rules, from an affiliate without prior approval from the Commission.

2. Provision of Supply, Capacity, Services or Information: Except as provided for in Sections V D, V E, and VII, a utility shall provide access to utility information, services, and unused capacity or supply on the same terms for all similarly situated market participants. If a utility provides supply, capacity, services, or information to its affiliate(s), it shall contemporaneously make the offering available to all similarly situated market participants, which include all competitors serving the same market as the utility's affiliates.

Deleted: provided the transactions provided for in Section VII comply with all of the other adopted Rules,

3. Offering of Discounts: Except when made generally available by the utility through an open, competitive bidding process, if a utility offers a discount or waives all or any part of any other charge or fee to its affiliates, or offers a discount or waiver for a transaction in which its affiliates are involved, the utility shall contemporaneously make such discount or waiver available to all similarly situated market participants. The utilities should not use the "similarly situated" qualification to create such a unique discount arrangement with their affiliates such that no competitor could be considered similarly situated. All competitors serving the same market as the utility's affiliates should be offered the same discount as the discount received by the affiliates. A utility shall document the cost differential underlying the discount to its affiliates in the affiliate discount report described in Rule III F 7 below.

4. Tariff Discretion: If a tariff provision allows for discretion in its application, a utility shall apply that tariff provision in the same

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manner to its affiliates and other market participants and their respective customers.

5. No Tariff Discretion: If a utility has no discretion in the application of a tariff provision, the utility shall strictly enforce that tariff provision.

6. Processing Requests for Services Provided by the Utility: A utility shall process requests for similar services provided by the utility in the same manner and within the same time for its affiliates and for all other market participants and their respective customers.

C. Tying of Services Provided by a Utility Prohibited: A utility shall not condition or otherwise tie the provision of any services provided by the utility, nor the availability of discounts of rates or other charges or fees, rebates, or waivers of terms and conditions of any services provided by the utility, to the taking of any goods or services from its affiliates.

D. No Assignment of Customers: A utility shall not assign customers to which it currently provides services to any of its affiliates, whether by default, direct assignment, option or by any other means, unless that means is equally available to all competitors.

E. Business Development and Customer Relations: Except as otherwise provided by these Rules, a utility shall not:

1. provide leads to its affiliates;
2. solicit business on behalf of its affiliates;
3. acquire information on behalf of or to provide to its affiliates;
4. share market analysis reports or any other types of proprietary or nonpublicly available reports, including but not limited to market, forecast, planning or strategic reports, with its affiliates;
5. request authorization from its customers to pass on customer information exclusively to its affiliates;
6. give the appearance that the utility speaks on behalf of its affiliates or that the customer will receive preferential treatment as a consequence of conducting business with the affiliates; or

7. give any appearance that the affiliate speaks on behalf of the utility.

F. Affiliate Discount Reports: If a utility provides its affiliates a discount, rebate, or other waiver of any charge or fee associated with [products or services](#) provided by the utility, the utility shall, within 24 hours of the time at which the [product or service](#) provided by the utility is so provided, post a notice on its electronic bulletin board providing the following information:

1. the name of the affiliate involved in the transaction;
2. the rate charged;
3. the maximum rate;
4. the time period for which the discount or waiver applies;
5. the quantities involved in the transaction;
6. the delivery points involved in the transaction;
7. any conditions or requirements applicable to the discount or waiver, and a documentation of the cost differential underlying the discount as required in Rule III B 2 above; and
8. procedures by which a nonaffiliated entity may request a comparable offer.

A utility that provides an affiliate a discounted rate, rebate, or other waiver of a charge or fee associated with services provided by the utility shall maintain, for each billing period, the following information:

9. the name of the entity being provided services provided by the utility in the transaction;
10. the affiliate's role in the transaction (i.e., shipper, marketer, supplier, seller);
11. the duration of the discount or waiver;
12. the maximum rate;
13. the rate or fee actually charged during the billing period; and

14. the quantity of products or services scheduled at the discounted rate during the billing period for each delivery point.

All records maintained pursuant to this provision shall also conform to FERC rules where applicable.

IV. Disclosure and Information

A. **Customer Information:** A utility shall provide customer information to its affiliates and unaffiliated entities on a strictly non-discriminatory basis, and only with prior affirmative customer written consent.

B. **Non-Customer Specific Non-Public Information:** A utility shall make non-customer specific non-public information, including but not limited to information about a utility's natural gas or electricity purchases, sales, or operations or about the utility's gas-related goods or services and electricity-related goods or services, available to the utility's affiliates only if the utility makes that information contemporaneously available to all other service providers on the same terms and conditions, and keeps the information open to public inspection. Unless otherwise provided by these Rules, a utility continues to be bound by all Commission-adopted pricing and reporting guidelines for such transactions. A utility is also permitted to exchange proprietary information with its affiliates, provided the utility follows all Commission-adopted pricing and reporting guidelines for such transactions, and it is necessary to exchange this information in the provision of the corporate support services permitted by Rule V E below. The affiliate's use of such proprietary information is limited to use in conjunction with the permitted corporate support services, and is not permitted for any other use. Nothing in this Rule precludes the exchange of information pursuant to D.97-10-031.

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C. Information a Utility Must Provide to the Commission: A utility shall report to the Commission, on a semi-annual basis, any exchange of or discussion about non-public information between employees, consultants, or agents of the utility and employees, consultants, or agents of the utility's parent holding company or any affiliates, whether in person or by other means, if the non-public information concerns:

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1. information supplied to the utility from a competitor of the utility's affiliate;
2. negotiations between the utility and a competitor of its affiliate;
3. utility procurement plans for electricity or natural gas, which could include procurement from an affiliate;
4. the utility's operational matters, which could materially affect the utility's affiliate(s) and its competitors;
5. expansion plans of the utility; or
6. the utility affiliate's competition or potential competition with other entities.

The report shall be provided to the Directors of the Commission's Energy Division and Division of Ratepayer Advocates and shall disclose: the date and place of the exchange or discussion; the names and positions of the people who communicated or received the information; and the nature of the information. The utility shall also retain, for a minimum of three years, copies of any document or other records in its possession or control pertaining to all such exchanges or discussions. The utility shall provide copies of the retained documents or other records upon the request of the Commission or its staff, whether or not in the context of a pending proceeding.

D. Service Provider Information: Except upon request by a customer or as otherwise authorized by the Commission, or approved by another governmental body, a utility shall not provide its customers with any list of service providers, which includes or identifies the utility's affiliates, regardless of whether such list also includes or identifies the names of unaffiliated entities.

E. Supplier Information: A utility may provide non-public information and data which has been received from unaffiliated suppliers to its affiliates or non-affiliated entities only if the utility first obtains written affirmative authorization to do so from the supplier. A utility shall not actively solicit the release of such information exclusively to its own affiliate in an effort to keep such information from other unaffiliated entities.

F. Affiliate-Related Advice or Assistance: Except as otherwise provided in these Rules, a utility shall not offer or provide customers advice or assistance with regard to its affiliates or other service providers.

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Deleted: A utility shall submit lists approved by other governmental bodies in the first semi-annual advice letter filing referenced in Rule IV.C.2 following such approval, but may provide customers with such lists pending action on the advice letter.¶

Deleted: 2. If a customer requests information about any affiliated service provider, the utility shall provide a list of all providers of gas-related, electricity-related, or other utility-related goods and services operating in its service territory, including its affiliates. The Commission shall authorize, by semi-annual utility advice letter filing, and either the utility, the Commission, or a Commission-authorized third party provider shall maintain on file with the Commission a copy of the most updated lists of service providers which have been created to disseminate to a customer upon a customer's request. Any service provider may request that it be included on such list, and, barring Commission direction, the utility shall honor such request. Where maintenance of such list would be unduly burdensome due to the number of service providers, subject to Commission approval by advice letter filing, the utility shall direct the customer to a generally available listing of service providers (e.g., the Yellow Pages). In such cases, no list shall be provided. If there is no Commission-authorized list available, utilities may refer customers to a generally available listing of service providers (e.g., the Yellow Pages.) The list of service providers should make clear that the Commission does not guarantee the financial stability or service quality of the service providers listed by the act of approving this list.¶

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G. Record-Keeping: A utility shall maintain contemporaneous records documenting all tariffed and nontariffed transactions with its affiliates, including but not limited to, all waivers of tariff or contract provisions and all discounts and all negotiations of any sort between the utility and its affiliate whether or not they are consummated. A utility shall maintain such records for a minimum of three years and longer if this Commission or another government agency so requires. The utility shall make such records available for third party review upon 72 hours' notice, or at a time mutually agreeable to the utility and third party.

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If D.97-06-110 is applicable to the information the utility seeks to protect, the utility should follow the procedure set forth in D.97-06-110, except that the utility should serve the third party making the request in a manner that the third party receives the utility's D.97-06-110 request for confidentiality within 24 hours of service.

H. Maintenance of Affiliate Contracts and Related Bids: A utility shall maintain a record of all contracts and related bids for the provision of work, products or services between the utility and its affiliates for no less than a period of three years, and longer if this Commission or another government agency so requires.

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I. FERC Reporting Requirements: To the extent that reporting rules imposed by the FERC require more detailed information or more expeditious reporting, nothing in these Rules shall be construed as modifying the FERC rules.

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V. Separation

A. **Corporate Entities:** A utility, its parent holding company, and its affiliates shall be separate corporate entities.

B. **Books and Records:** A utility, its parent holding company, and its affiliates shall keep separate books and records.

1. Utility books and records shall be kept in accordance with applicable Uniform System of Accounts (USOA) and Generally Accepted Accounting Procedures (GAAP).

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2. The books and records of [the utilities' parent holding companies and affiliates](#) shall be open for examination by the Commission and its staff consistent with the provisions of Public Utilities Code Sections 314 and 701, [the conditions in the Commission's orders authorizing the utilities' holding companies and/or mergers and these Rules.](#)

- C. **Sharing of Plant, Facilities, Equipment or Costs:** A utility shall not share office space, office equipment, services, and systems with its affiliates, nor shall a utility access the computer or information systems of its affiliates or allow its affiliates to access its computer or information systems, except to the extent appropriate to perform shared corporate support functions permitted under Section V E of these Rules. Physical separation required by this rule shall be accomplished preferably by having office space in a separate building, or, in the alternative, through the use of separate elevator banks and/or security-controlled access. This provision does not preclude a utility from offering a joint service provided this service is authorized by the Commission and is available to all non-affiliated service providers on the same terms and conditions (e.g., joint billing services pursuant to D.97-05-039).
- D. **Joint Purchases:** To the extent not precluded by any other Rule, the utilities and their affiliates may make joint purchases of good and services, but not those associated with the traditional utility merchant function. For purpose of these Rules, to the extent that a utility is engaged in the marketing of the commodity of electricity or natural gas to customers, as opposed to the marketing of transmission and distribution services, it is engaging in merchant functions. Examples of permissible joint purchases include joint purchases of office supplies and telephone services. Examples of joint purchases not permitted include gas and electric purchasing for resale, purchasing of gas transportation and storage capacity, purchasing of electric transmission, systems operations, and marketing. The utility must insure that all joint purchases are priced, reported, and conducted in a manner that permits clear identification of the utility and affiliate portions of such purchases, and in accordance with applicable Commission allocation and reporting rules.
- E. **Corporate Support:** [A](#) utility, its parent holding company, or a separate affiliate created solely to perform corporate support services may share with its affiliates [only](#) joint corporate oversight, governance, support systems and personnel, [as further specified below](#). Any shared support shall be priced, reported and conducted in accordance with

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the Separation and Information Standards set forth herein, as well as other applicable Commission pricing and reporting requirements.

Such joint utilization shall not allow or provide a means for the transfer of confidential information from the utility to the affiliate, create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates. In the compliance plan, a corporate officer from the utility and holding company shall verify the adequacy of the specific mechanisms and procedures in place to ensure the utility follows the mandates of this paragraph, and to ensure the utility is not utilizing joint corporate support services as a conduit to circumvent these Rules.

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Examples of services that may be shared include: payroll, taxes, shareholder services, insurance, financial reporting, corporate accounting, corporate security, human resources (compensation, benefits, employment policies), employee records, and pension management.

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Examples of services that may not be shared include: employee recruiting, engineering, financial planning and analysis, regulatory affairs, lobbying, legal, risk management (including hedging and financial derivatives and arbitrage services), gas and electric purchasing for resale, purchasing of gas transportation and storage capacity, purchasing of electric transmission, system operations, and marketing.

F. Corporate Identification and Advertising:

1. A utility shall not trade upon, promote, or advertise its affiliate's affiliation with the utility, nor allow the utility name or logo to be used by the affiliate or in any material circulated by the affiliate, unless it discloses in plain legible or audible language, on the first page or at the first point where the utility name or logo appears that:
 - a. the affiliate "is not the same company as [i.e. PG&E, Edison, the Gas Company, etc.], the utility,";
 - b. the affiliate is not regulated by the California Public Utilities Commission; and
 - c. "you do not have to buy [the affiliate's] products in order to continue to receive quality regulated services from the utility."

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The application of the name/logo disclaimer is limited to the use of the name or logo in California.

2. A utility, through action or words, shall not represent that, as a result of the affiliate's affiliation with the utility, its affiliates will receive any different treatment than other service providers.
3. A utility shall not offer or provide to its affiliates advertising space in utility billing envelopes or any other form of utility customer written communication unless it provides access to all other unaffiliated service providers on the same terms and conditions.
4. A utility shall not participate in joint advertising or joint marketing with its affiliates. This prohibition means that utilities may not engage in activities which include, but are not limited to the following:
 - a. A utility shall not participate with its affiliates in joint sales calls, through joint call centers or otherwise, or joint proposals (including responses to requests for proposals (RFPs)) to existing or potential customers. At a customer's unsolicited request, a utility may participate, on a nondiscriminatory basis, in non-sales meetings with its affiliates or any other market participant to discuss technical or operational subjects regarding the utility's provision of transportation service to the customer;
 - b. Except as otherwise provided for by these Rules, a utility shall not participate in any joint activity with its affiliates. The term "joint activities" includes, but is not limited to, advertising, sales, marketing, communications and correspondence with any existing or potential customer;
 - c. A utility shall not participate with its affiliates in trade shows, conferences, or other information or marketing events held in California.
5. A utility shall not share or subsidize costs, fees, or payments with its affiliates associated with research and development activities or investment in advanced technology research.

G. Employees:

1. Except as permitted in Section V E (corporate support), a utility and its affiliates shall not jointly employ the same employees. This Rule prohibiting joint employees also applies to Board Directors, corporate

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officers, consultants, and contractors, except for the following circumstances: In instances when this Rule is applicable to holding companies, any board member or corporate officer may serve on the holding company and with either the utility or affiliate (but not both). Where the utility is a multi-state utility, is not a member of a holding company structure, and assumes the corporate governance functions for the affiliates, the prohibition against any board member or corporate officer of the utility also serving as a board member or corporate officer of an affiliate shall only apply to affiliates that operate within California. In the case of shared directors and officers, a corporate officer from the utility and holding company shall describe and verify in the utility's compliance plan required in Rule VI the adequacy of the specific mechanisms and procedures in place to ensure that the utility is not utilizing shared officers and directors as a conduit to circumvent any of these Rules. In its compliance plan, the utility shall list all shared directors and officers between the utility and affiliates. No later than 30 days following a change to this list, the utility shall notify the Commission's Energy Division and the parties on the service list of R.97-04-011/I.97-04-012 of any change to this list.

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2. All employee movement between a utility and its affiliates shall be consistent with the following provisions:
 - a. A utility shall track and report to the Commission all employee movement between the utility and affiliates. The utility shall report this information annually pursuant to our Affiliate Transaction Reporting Decision, D.93-02-016, 48 CPUC2d 163, 171-172 and 180 (Appendix A, Section I and Section II H.).
 - b. Once an employee of a utility becomes an employee of an affiliate, the employee may not return to the utility for a period of one year. This Rule is inapplicable if the affiliate to which the employee transfers goes out of business during the one-year period. In the event that such an employee returns to the utility, such employee cannot be retransferred, reassigned, or otherwise employed by the affiliate for a period of two years. Employees transferring from the utility to the affiliate are expressly prohibited from using information gained from the utility in a discriminatory or exclusive fashion, to the benefit of the affiliate or to the detriment of other unaffiliated service providers.
 - c. When an employee of a utility is transferred, assigned, or otherwise employed by the affiliate, the affiliate shall make a one-time payment to the utility in an amount equivalent to 25% of the employee's base

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annual compensation, unless the utility can demonstrate that some lesser percentage (equal to at least 15%) is appropriate for the class of employee included. In the limited case where a rank-and-file (non-executive) employee's position is eliminated as a result of electric industry restructuring, a utility may demonstrate that no fee or a lesser percentage than 15% is appropriate. All such fees paid to the utility shall be accounted for in a separate memorandum account to track them for future ratemaking treatment (i.e. credited to the Electric Revenue Adjustment Account or the Core and Noncore Gas Fixed Cost Accounts, or other ratemaking treatment, as appropriate), on an annual basis, or as otherwise necessary to ensure that the utility's ratepayers receive the fees. This transfer payment provision will not apply to clerical workers. Nor will it apply to the initial transfer of employees to the utility's holding company to perform corporate support functions or to a separate affiliate performing corporate support functions, provided that that transfer is made during the initial implementation period of these rules or pursuant to a § 851 application or other Commission proceeding. However, the rule will apply to any subsequent transfers or assignments between a utility and its affiliates of all covered employees at a later time.

Deleted: The Board of Directors must vote to classify these employees as "impacted" by electric restructuring and these employees must be transferred no later than December 31, 1998, except for the transfer of employees working at divested plants. In that instance, the Board of Directors must vote to classify these employees as "impacted" by electric restructuring and these employees must be transferred no later than within 60 days after the end of the O&M contract with the new plant owners.

d. Any utility employee hired by an affiliate shall not remove or otherwise provide information to the affiliate which the affiliate would otherwise be precluded from having pursuant to these Rules.

e. A utility shall not make temporary or intermittent assignments, or rotations to its energy marketing affiliates. Utility employees not involved in marketing may be used on a temporary basis (less than 30% of an employee's chargeable time in any calendar year) by affiliates not engaged in energy marketing only if:

i. All such use is documented and reported in accordance with these Rules and existing Commission reporting requirements, and compensation to the utility is priced at a minimum of the greater of fully loaded cost plus 10% of direct labor cost, or fair market value.

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ii. Utility needs for utility employees always take priority over any affiliate requests;

Deleted: When the affiliate obtains the services of an executive employee, compensation to the utility should be priced at a minimum of the greater of fully loaded cost plus 15% of direct labor cost, or fair market value.

iii. No more than 5% of full time equivalent utility employees may be on loan at a given time;

iv. Utility employees agree, in writing, that they will abide by these

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Affiliate Transaction Rules; and

v. Affiliate use of utility employees must be conducted pursuant to a written agreement approved by appropriate utility and affiliate officers.

H. Transfer of Goods and Services: To the extent that these Rules do not prohibit transfers of goods and services between a utility and its affiliates, and except for as provided by Rule V.G.2.e, all such transfers shall be subject to the following pricing provisions:

1. Transfers from the utility to its affiliates of goods and services produced, purchased or developed for sale on the open market by the utility will be priced at fair market value.
2. Transfers from an affiliate to the utility of goods and services produced, purchased or developed for sale on the open market by the affiliate shall be priced at no more than fair market value.
3. For goods or services for which the price is regulated by a state or federal agency, that price shall be deemed to be the fair market value, except that in cases where more than one state commission regulates the price of goods or services, this Commission's pricing provisions govern.
4. Goods and services produced, purchased or developed for sale on the open market by the utility will be provided to its affiliates and unaffiliated companies on a nondiscriminatory basis, except as otherwise required or permitted by these Rules or applicable law.
5. Transfers from the utility to its affiliates of goods and services not produced, purchased or developed for sale by the utility will be priced at fully loaded cost plus 5% of direct labor cost.
6. Transfers from an affiliate to the utility of goods and services not produced, purchased or developed for sale by the affiliate will be priced at the lower of fully loaded cost or fair market value.

VI. Regulatory Oversight

A. Compliance Plans: No later than April 30, 2007, each utility shall file a compliance plan by advice letter with the Energy Division of the Commission.
The compliance plan shall include:

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APPENDIX A

1. A list of all affiliates of the utility, as defined in Rule I A of these Rules, and for each affiliate, its purpose or activities, and whether the utility claims that Rule II B makes these Rules applicable to the affiliate;

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2. A comprehensive demonstration to the Commission that there are adequate procedures in place that will ensure compliance with these Rules.

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Deleted: The utility should file its¶ compliance plan as an advice letter with the Commission's Energy Division¶ and serve it on the parties to this proceeding.

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The utility's compliance plan shall be in effect between the filing and a Commission determination of the advice letter. A utility shall file a compliance plan annually thereafter by advice letter where there is some change in the compliance plan (i.e., when there has been a change in the purpose or activities of an affiliate, a new affiliate has been created, or the utility has changed the compliance plan for any other reason).

B. New Affiliate Compliance Plans: Upon the creation of a new affiliate, the utility shall immediately notify the Commission of the creation of the new affiliate, as well as posting notice on its electronic bulletin board. No later than 60 days after the creation of this affiliate, the utility shall file an advice letter with the Energy Division of the Commission. The advice letter shall state the affiliate's purpose or activities, whether the utility claims that Rule II B makes these Rules applicable to the affiliate, and include a comprehensive demonstration to the Commission that there are adequate procedures in place that will ensure compliance with these Rules.

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C. Affiliate Audit: The Commission's Energy Division shall have audits performed by independent auditors that cover each calendar year which ends on December 31, and that verify that the utility is in compliance with the Rules set forth herein. The Energy Division shall post the audit reports on the Commission's web site. The audits shall be at shareholder expense.

Deleted: demonstrate how the utility will implement these Rules with respect to the¶ new affiliate.¶

Deleted: No later than December 31, 1998, and every year thereafter,¶ the utility shall

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Deleted: The utilities shall file the¶ independent auditor's report with the Commission's Energy Division¶ beginning no later than May 1, 1999, and serve it on all parties to this¶ proceeding.

D. Witness Availability: Affiliate officers and employees shall be made available to testify before the Commission as necessary or required, without subpoena, consistent with the provisions of Public Utilities Code Sections 314 and 701, the conditions in the Commission's orders authorizing the utilities' holding companies and/or mergers and these Rules.

VII. Utility Products and Services

A. General Rule: Except as provided for in these Rules, new products and services shall be offered through affiliates.

B. Definitions: The following definitions apply for the purposes of this section (Section VII) of these Rules:

APPENDIX A

1. "Category" refers to a factually similar group of products and services that use the same type of utility assets or capacity. For example, "leases of land under utility transmission lines" or "use of a utility repair shop for third party equipment repair" would each constitute a separate product or service category.

2. "Existing" products and services are those which a utility is offering on the effective date of these Rules.

3. "Products" include use of property, both real and intellectual, other than those uses authorized under General Order 69-C.

4. "Tariff" or "tariffed" refers to rates, terms and conditions of services as approved by this Commission or the Federal Energy Regulatory Commission (FERC), whether by traditional tariff, approved contract or other such approval process as the Commission or the FERC may deem appropriate.

C. Utility Products and Services: Except as provided in these Rules, a utility shall not offer nontariffed products and services. In no event shall a utility offer natural gas or electricity commodity service on a nontariffed basis. A utility may only offer for sale the following products and services:

1. Existing products and services offered by the utility pursuant to tariff;

2. Unbundled versions of existing utility products and services, with the unbundled versions being offered on a tariffed basis;

3. New products and services that are offered on a tariffed basis; and

4. Products and services which are offered on a nontariffed basis and which meet the following conditions:

- a. The nontariffed product or service utilizes a portion of a utility asset or capacity;
- b. such asset or capacity has been acquired for the purpose of and is necessary and useful in providing tariffed utility services;
- c. the involved portion of such asset or capacity may be used to offer the product or service on a nontariffed basis without adversely affecting the cost, quality or reliability of tariffed utility products and services;
- d. the products and services can be marketed with minimal or no incremental ratepayer capital, minimal or no new forms of liability or business risk being incurred by utility ratepayers, and no undue

diversion of utility management attention; and

e. The utility's offering of such nontariffed product or service does not violate any law, regulation, or Commission policy regarding anticompetitive practices.

D. Conditions Precedent to Offering New Products and Services: This Rule does not represent an endorsement by the Commission of any particular nontariffed utility product or service. A utility may offer new nontariffed products and services only if the Commission has adopted and the utility has established:

1. A mechanism or accounting standard for allocating costs to each new product or service to prevent cross-subsidization between services a utility would continue to provide on a tariffed basis and those it would provide on a nontariffed basis;
2. A reasonable mechanism for treatment of benefits and revenues derived from offering such products and services, except that in the event the Commission has already approved a performance-based ratemaking mechanism for the utility and the utility seeks a different sharing mechanism, the utility should petition to modify the performance-based ratemaking decision if it wishes to alter the sharing mechanism, or clearly justify why this procedure is inappropriate, rather than doing so by application or other vehicle.
3. Periodic reporting requirements regarding pertinent information related to nontariffed products and services, [including the efficiencies gained by the provision of such products and services](#); and
4. Periodic auditing of the costs allocated to and the revenues derived from nontariffed products and services.

E. Requirement to File an Advice Letter: Prior to offering a new category of nontariffed products or services as set forth in Section VII C above, a utility shall file an advice letter in compliance with the following provisions of this paragraph.

1. The advice letter shall:
 - a. demonstrate compliance with these rules;
 - b. address the amount of utility assets dedicated to the non-utility venture, in order to ensure that a given product or service does not threaten the provision of utility service, and show that the new

APPENDIX A

product or service will not result in a degradation of cost, quality, or reliability of tariffed goods and services;

c. address [through a study of the relevant market](#) the potential impact of the new product or service on competition in the relevant market including but not limited to the degree in which the relevant market is already competitive in nature and the degree to which the new category of products or services is projected to affect that market.

d. be served on the service list of Rulemaking 97-04-011/Investigation 97-04-012, as well as on any other party appropriately designated by the rules governing the Commission's advice letter process.

Deleted: demonstrate that the utility has not received competition transition¶ charge (CTC) recovery in the Transition Cost Proceeding,¶ A.96-08-001, or other related CTC Commission proceeding, for the¶ portion of the utility asset dedicated to the non-utility venture; and¶ d.

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2. For categories of nontariffed products or services targeted and offered to less than 1% of the number of customers in the utility's customer base, in the absence of a protest alleging non-compliance with these Rules or any law, regulation, decision, or Commission policy, or allegations of harm, the utility may commence offering the product or service 30 days after submission of the advice letter. For categories of nontariffed products or services targeted and offered to 1% or more of the number of customers in the utility's customer base, the utility may commence offering the product or service after the Commission approves the advice letter through the normal advice letter process.

3. A protest of an advice letter filed in accordance with this paragraph shall include:

- a. An explanation of the specific Rules, or any law, regulation, decision, or Commission policy the utility will allegedly violate by offering the proposed product or service, with reasonable factual detail; or
- b. An explanation of the specific harm the protestant will allegedly suffer.

4. If such a protest is filed, the utility may file a motion to dismiss the protest within 5 working days if it believes the protestant has failed to provide the minimum grounds for protest required above. The protestant has 5 working days to respond to the motion.

5. The intention of the Commission is to make its best reasonable efforts to rule on such a motion to dismiss promptly. Absent a ruling granting a motion to dismiss, the utility shall begin offering that category of products and services only after Commission approval through the normal advice letter process.

F. Existing Offerings: Unless and until further Commission order to the contrary as a result of the advice letter filing or otherwise, a utility that is offering tariffed or nontariffed products and services, as of the effective date of this decision, may continue to offer such products and services, provided that the utility complies with the cost allocation and reporting requirements in this rule. No later than January 30, 2007, each utility shall submit an advice letter describing the existing products and services (both tariffed and nontariffed) currently being offered by the utility and the number of the Commission decision or advice letter approving this offering, if any, and requesting authorization or continuing authorization for the utility's continued provision of this product or service in compliance with the criteria set forth in Rule VII. This requirement applies to both existing products and services explicitly approved and not explicitly approved by the Commission.

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G. Section 851 Application: A utility must continue to comply fully with the provisions of Public Utilities Code Section 851 when necessary or useful utility property is sold, leased, assigned, mortgaged, disposed of, or otherwise encumbered as part of a nontariffed product or service offering by the utility. If an application pursuant to Section 851 is submitted, the utility need not file a separate advice letter, but shall include in the application those items which would otherwise appear in the advice letter as required in this Rule.

H. Periodic Reporting of Nontariffed Products and Services: Any utility offering nontariffed products and services shall file periodic reports with the Commission's Energy Division twice annually for the first two years following the effective date of these Rules, then annually thereafter unless otherwise directed by the Commission. The utility shall serve periodic reports on the service list of this proceeding. The periodic reports shall contain the following information:

1. A description of each existing or new category of nontariffed products and services and the authority under which it is offered;
2. A description of the types and quantities of products and services contained within each category (so that, for example, "leases for agricultural nurseries at 15 sites" might be listed under the category "leases of land under utility transmission lines," although the utility would not be required to provide the details regarding each individual lease);

3. The total and marginal costs allocated to and revenues derived from each category;

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4. Current information on the proportion of relevant utility assets used to offer each category of product and service.

5. A showing that the provision of each product and service provides additional value to the utility, the ratepayers, and to customers in the relevant market.

I. Offering of Nontariffed Products and Services to Affiliates: Nontariffed products and services which are allowed by this Rule may be offered to utility affiliates only in compliance with all other provisions of these Affiliate Rules. Similarly, this Rule does not prohibit affiliate transactions which are otherwise allowed by all other provisions of these Affiliate Rules.

VIII. Complaint Procedures and Remedies (adopted by D.98-12-075) – insert these here

IX. Protecting the Utility's Financial Health

A. Information from Utility on Necessary Capital. Each utility shall provide to the Commission on the last business day of November of each year a report with the following information:

1. the utility's estimate of investment capital needed to build or acquire long-term assets (i.e., greater than one year), such as operating assets and utility infrastructure, over each of the next five years;
2. the utility's estimate of capital needed to meet resource procurement goals over each of the next five years;
3. the utility's policies concerning dividends, stock repurchase and retention of capital for each year;
4. the names of individuals involved in deciding corporate policies for the utility's dividends, stock repurchase and retention of capital;
5. the process by which corporate policies concerning dividends, stock repurchase and retention of capital are implemented; and
6. how the utility expects or intends to meet its investment capital needs.

B. Restrictions on Deviations from Authorized Capital Structure

A utility shall retain an equity ratio sufficient to maintain, in each and every year, the Commission-approved capital structure then in effect for ratemaking purposes. Whenever a financial event reduces a utility's

APPENDIX A

equity ratio by at least 1% below the Commission-approved ratio, the utility shall promptly file an advice letter or application for a waiver permitting deviation from its authorized capital structure. However, the utility shall not be considered in violation of this Rule during the time that its advice letter or application for a waiver is pending and has not been resolved by the Commission. On the last business day of the month of February each year, each utility shall report to the Commission the utility's "Public Financial Statement Capital Structure" and indicate its recorded (or actual) debt, and its preferred and common equity as of the end of the previous calendar year.

C. The utility shall not become or remain liable, directly or contingently, in connection with any indebtedness or other liability of any other person or entity, whether by guarantee, endorsement (other than endorsements of negotiable instruments for deposit or collection in the ordinary course of business), agreement to purchase or repurchase, agreement to supply or advance funds unless the utility has filed an application with and received authorization from the Commission.

D. The utility shall not issue dividends or repurchase stocks if and when its senior unsecured long term debt rating has decreased to the lowest investment grade, BBB (or its then equivalent) with Standard & Poor's Ratings Group and Baa2 (or its then equivalent) with Moody's Investors Service, Inc., unless the utility has filed an application with and received authorization from the Commission.

(END OF APPENDIX A)

APPENDIX B

GENERAL ORDER NO. 77-~~LM~~

(Supersedes General Order No. 77-~~KL~~)

Public Utilities Commission of the State of California

IN THE MATTER OF THE FILING WITH THE PUBLIC UTILITIES COMMISSION BY
PUBLIC UTILITIES OF DATA ON COMPENSATION, DUES, DONATIONS,
SUBSCRIPTIONS, CONTRIBUTIONS AND LEGAL FEES.

IT IS HEREBY ORDERED, That each public utility having gross annual operating revenues of more than \$500,000 but less than \$1 billion is directed and required to prepare and file with the Public Utilities Commission of the State of California on or before March 31 of each and every year a statement showing for the preceding calendar year:

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(a) the names titles and duties of all Executive Officers and the compensation received by each such Executive Officer; "Executive Officer" includes the President, Secretary, Treasurer, and Vice President in charge of a principal business unit, division or function of the respondent. It also includes any other person who performs policy making functions and is employed by the respondent; and

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(b) the names, titles and duties of all employees other than the officers named above who received compensation at the rate of \$85,000 or more per annum, and the compensation received by each such employee; and

(c) the amount of the expense account, any contingent fees or other moneys directly or indirectly paid to each such officer and employee named in the statement.

IT IS HEREBY FURTHER ORDERED, That each public utility having gross annual operating revenues of \$1 billion or more is directed and required to prepare and file with the Public Utilities Commission of the State of California on or before March 31 of each and every year a statement showing for the preceding calendar year:

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(a) the names, titles and duties of all Executive Officers and any other employees who received compensation including a base salary of \$250,000 or more per annum, and the total compensation¹ received, or awarded in the past year but not yet received, by each such Executive Officer or employee. "Executive Officer" includes the President, Secretary, Treasurer, and Vice President in charge of a principal business unit, division, or function of the respondent. It also includes any other person who performs policy making functions and is employed by the respondent. Total compensation for each such Executive Officer and employee shall be reported by category and in the aggregate; and
(b) the names, titles and duties of all employees other than the officers and employees named above who received compensation including a base salary of \$125,000 or more

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¹ For the purposes of this provision of the General Order, total compensation means all components of the officer's or other employee's compensation, such as cash compensation (including base salary and incentives) whether paid in the prior fiscal year or awarded but not yet paid, benefits (including medical, dental, vision, life insurance, disability, pension, and savings plans), holdings of equity-related interests that relate to compensation or are potential sources of future gains, any other retirement or other post-employment benefits, and any expense account or other perquisite, whether paid directly or indirectly. The foregoing examples are not exclusive.

per annum, and the compensation received by each such employee, excluding pension and benefits but including the amount of the expense account, any contingent fees or other moneys directly or indirectly paid to each such employee; and

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(c) the names, titles and duties of the principal Executive Officers of the utility's holding company whose compensation is listed in the holding company's proxy statement and the total compensation received, or awarded in the past year but not yet received, by each such Executive Officer. Total compensation for each such Executive Officer shall be reported by category and in the aggregate; and

Deleted: the amount of the expense account, any contingent fees or other moneys directly or indirectly paid to each such officer and employee named in the statement

(d) the proportion of the compensation disclosed in response to subsection (a) or (c), above, that is paid, directly or indirectly, by the utility's ratepayers (e.g. 100% or some lesser percentage).

(f) At the option of each utility, the names of the Executive Officers and employees subject to the reporting requirements in subsections (a) through (c) above may be listed in conditional access reports that will not be disclosed publicly in the absence of authorization by the Commission or a presiding officer during the course of a proceeding or by the Commission if no proceeding is pending, on the condition that the utility also files a report for public inspection in which the individual names are redacted.

(g) Each utility shall provide an internet site-link to all publicly available compensation documents filed with the Securities and Exchange Commission.

IT IS HEREBY FURTHER ORDERED, that recognizing that the Affiliates Transaction Rules of the California Public Utilities Commission require separation between a utility and its holding company and other affiliates and prohibit a utility from providing preferential treatment to its affiliates, each public utility with gross annual operating revenues in California of \$1 billion or more, which also is owned or controlled by a holding company, is directed and required to prepare and file with the Public Utilities Commission of the State of California on or before March 31 of each and every year a narrative statement in plain English showing for the preceding calendar year, the method for determining compensation to the utility's Executive Officers and employees and explaining how that method avoids tying compensation to the profitability of the utility's holding company or other affiliates.

IT IS HEREBY FURTHER ORDERED, that each public utility having gross annual operating revenues of \$500,000 or more is directed and required to prepare and file with the Public Utilities Commission of the State of California on or before March 31 of each and every year a statement showing for the preceding calendar year, the following information:

- (a) the total dues, donations, subscriptions and contributions of all kinds paid directly, or paid to each officer or employee as reimbursement for said items; the names of persons, associations, firms or corporations receiving such payments directly or indirectly; and the amount of, and account charged, for each such payment; and
- (b) the total payments to attorneys, including all attorneys who are on the payroll of the reporting public utility or who are on the payroll of or receiving payment from any corporation affiliated with the reporting public utility; the name of each attorney or legal firm receiving such payment; and the amount of, and account charged, for the total amount paid to each of said attorneys or legal firms; and

(c) utilities conducting more than one type of utility or nonutility operation shall report the information relating to dues, donations, subscriptions, contributions, and payments to attorneys and legal firms on a total company basis, segregated by type of operations.

EXEMPTIONS: The provisions of this general order do not apply to competitive local exchange carriers (telephone), non-dominant interexchange carriers (telephone), non-dominant gas storage companies, commercial radio service providers, Class I railroad corporations, and any other utility or class of utility specifically exempted by formal order of the Commission.

(END OF APPENDIX B)